REMARKS

Claims 16-25 and 31 were pending in the present application.

Claim 16 has been amended, leaving claims 16-25 and 31 for consideration in the present amendment. Claim 16 has been amended to correct a typographical error. It is believed that the amendments made herein may be properly entered at this time, i.e., after final rejection, because the amendments do not require a new search or raise new issues and reduce issues for appeal. No new matter is believed to have been entered by way of amendment.

Favorable reconsideration and allowance of the claims are respectfully requested in view of the foregoing amendments and the following remarks.

Provisional Nonstatutory Double Patenting Rejections

Claims 16 and 22 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 14 and 20 of the copending application published as Application Publication No. 2007/0105746 A1. 03/29/2010 Office Action, paragraph spanning pages 2 and 3.

Applicants respectfully note that the present application was filed before the cited application. Accordingly, the present provisional rejection should be withdrawn if it becomes the sole remaining rejection. See MPEP 804(I)(B)(1) ("If a 'provisional' nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.").

Obviousness Rejections over Vanlerberghe

A. Claims 16, 19-25 and 31 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Vanlerberghe et al. (US Patent 5,985,255). Applicants respectfully traverse.

Claim 16 recites a process that includes, *inter alia*, stirring the phase B into an aqueous phase A. The claim language is unambiguous and can be inferred as meaning that phase B is added or poured into aqueous phase A. This feature is **not** taught or suggested in Vanlerberghe. That is, Vanlerberghe fails to teach or even suggest this very specific order of addition as claimed.

Instead, Vanlerberghe discloses that water (i.e., aqueous phase A) is added to a wax surfactant phase (phase B). This is not the same order of addition as positively claimed by Applicants in that phase B is stirred into an aqueous phase A. Because of this very specific order of addition, the water phase is the continuous phase from the beginning until the end of the featured process. This is markedly different from Vanlerberghe's process in which water is added to the wax/surfactant stage yielding a water-in-oil emulsion (with water forming the disperse phase and the wax/surfactant forming the continuous phase (see e.g., Vanlerberghe at col.1 ll. 36-43); until sufficient water has been added so that phase inversion then occurs and an oil-in-water emulsion is formed (with water forming the continuous phase and the wax/surfactant phase forming the disperse phase (see Vanlerberghe, Col. 4, ll. 59-64).

In view of the foregoing, a *prima facie* case of obviousness has not been established because Vanlerberghe fails to teach or suggest stirring the phase B into an aqueous phase A as claimed by Applicants. This critical order of addition is markedly different from Vanlerberghe's disclosed and suggested process. Accordingly, the rejection is requested to be withdrawn.

B. Claims 17 and 18 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Vanlerberghe et al. (US Patent 5,985,255) as applied to claims 16 and 19-31 above, and further in view of Dahms (US Patent 5,747,012). Applicants respectfully traverse.

Vanlerberghe is discussed above and fails to teach or suggest a process that includes a very specific order addition, i.e., stirring the phase B into an aqueous phase A.

Dahm fails to compensate for the deficiencies of Vanlerberghe. Dahm is relied upon for its disclosure of a household kitchen mixer. There is no disclosure or even suggestion of a method for producing an aqueous vehicle dispersion in which there are solid active compound vehicle particles which are based on wax, polymer or lipid, have an average diameter in the range from 10 to 10,000 nm, and comprise at least one active pharmaceutical, cosmetic and/or food technology compound, fragrance or flavor, by, inter alia, mixing the active compound with the wax-, polymer- or lipid-based active compound vehicle and at least one emulsifier which leads in stage b) to the formation of a lyotropic liquid-crystalline mixed phase, at a temperature above the melting or softening point of the active compound vehicle, to form a phase B, and stirring the phase B into an aqueous phase A,

In view of the foregoing, the rejection is requested to be withdrawn.

It is believed that the foregoing remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and allowance is respectfully requested.

It is believed that all the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper.

If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130 maintained by Applicants' Attorneys.

Respectfully submitted,

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